



Mekong River Commission

For Sustainable Development

Procedures for Notification, Prior Consultation and Agreement

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Mekong River Commission

Procedures for Notification, Prior Consultation and Agreement

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PREAMBLE

Reaffirming the political will to continue to cooperate and promote in a constructive and mutually beneficial manner in the utilization and development of the Mekong River Basin water and related resources as recognized in the Agreement on the Cooperation for the Sustainable Development of the Mekong River Basin, signed at Chiang Rai, Thailand on 5 April 1995, hereinafter referred to as “the Mekong Agreement”;

Pursuant to the Mekong River Commission (MRC) Council’s Resolution on the Water Utilization Programme of 18th October 1999, and the decision of the MRC Joint Committee (JC) in February 2003 on the Establishment of the Technical Drafting Group 4 for the Procedures for Notification, Prior Consultation and Agreement, hereinafter referred to as “the Procedures”;

Recognizing the adaptive approach to the development of water utilization rules and the nature of the Procedures which are an integral part of the Rules for Water Utilization and Inter-Basin Diversions;

Reconfirming the commitment to work together to address the protection of the environment and the ecological balance in the Mekong Basin including the prevention of harmful effects and taking actions in emergency situations as covered by other Rules/Procedures approved by the MRC Council;

We hereby approve the following Procedures for Notification, Prior Consultation and Agreement:

1. Definitions of Key Terms

Wet and Dry Seasons: The dates of the start and end of the wet and dry seasons vary throughout the basin due to regional variations. According to the preliminary analyses of the relatively long time series of hydro-meteorological data, the wet season may start during mid-May to mid-June and end from mid-November to mid-December. The MRC JC will decide on the actual dates of the start and the end of the wet and dry seasons, based on analyses by the MRC Secretariat together with the National Mekong Committees (NMCs) of long term mainstream flow data.

Mainstream of the Mekong River: The river flowing through six countries, namely China, Myanmar, Lao PDR, Thailand, Cambodia and Viet Nam to the sea via My Thuan and My Tho in Viet Nam.

Mekong Tributary: A natural stream of the Mekong River System. For the purposes of the present Procedures, a tributary as decided by the JC is a natural stream of the Mekong River

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System whose flows have a significant impact on the mainstream. This definition is subject to be reviewed and agreed upon after some time of implementation if any concern is raised.

Water Use/Utilization: For the purpose of the present Procedures, it means any use of water which may have a significant impact to the water quality or flows regime of the mainstream of the Mekong River System by any member State. The Joint Committee may review and revise this definition from time-to-time as required for effective implementation of the Procedures.

Inter-Basin Water Diversion: A diversion of water from the mainstream or a tributary of the Mekong River System into another basin.

Relevant and Key Definitions from the Mekong Agreement:

Agreement under Article 5: A decision of the Joint Committee resulting from prior consultation and evaluation on any proposed use for inter-basin diversions during the wet season from the mainstream as well as for intra-basin use or inter-basin diversions of these waters during the dry season. The objective of this agreement is to achieve an optimum use and prevention of waste of the waters through a dynamic and practical consensus in conformity with the Rules for Water Utilization and Inter-Basin Diversions set forth in Article 26.

Notification: Timely providing information by a riparian to the Joint Committee on its proposed use of water according to the format, content and procedures set forth in the Rules for Water Utilization and Inter-Basin Diversions under Article 26.

Prior consultation: Timely notification plus additional data and information to the Joint Committee as provided in the Rules for Water Utilization and Inter-Basin Diversion under Article 26, that would allow the other member riparians to discuss and evaluate the impact of the proposed use upon their uses of water and any other affects, which is the basis for arriving at an agreement. Prior consultation is neither a right to veto the use nor unilateral right to use water by any riparian without taking into account other riparians' rights.

Proposed use: Any proposal for a definite use of the waters of the Mekong River system by any riparian, excluding domestic and minor uses of water not having a significant impact on mainstream flows.

2. Objectives

The objectives of the Procedures are:

- a. To provide steps for the MRC member States to support the establishment of the Rules for Water Utilization and Inter-Basin Diversions.
- b. To promote better understanding and cooperation among the MRC member countries in a constructive and mutually beneficial manner to ensure the sustainable development, management and conservation of the water and related resources of the Mekong River Basin;

3. Principles

The Procedures shall be governed by the following guiding principles:

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- a. Sovereign equality and territorial integrity;
- b. Equitable and reasonable utilization;
- c. Respect for rights and legitimate interests;
- d. Good faith; and
- e. Transparency.

4. Notification

4.1 Scope of Notification

4.1.1

In accordance with Article 5 of the Mekong Agreement, notification on any proposed use stipulated in 4.1.2 shall be timely submitted to the MRC JC consistent with the format and content, schedules and principles prescribed in the Procedures, as appeared in Annex I.

4.1.2

Notification requirement and procedures shall be applied to the following proposed uses:

- a. intra-basin use and inter-basin diversion on the tributaries, including Tonle Sap; and
- b. intra-basin use during the wet season on the mainstream;

4.2 Content and Form/Format of Notification

4.2.1 Content

The Notification shall include feasibility study report, implementation plan, schedule and all available data.

4.2.2 Form/Format

To facilitate the notification formulation, the form/format for notification is provided as Annex I of the Procedures.

4.3 Institutional Mechanism for Notification

Mechanism for handling Notification under the Procedures shall involve National Mekong Committees (NMCs) and MRC's bodies with their respective roles/functions, responsibilities which are as follows:

4.3.1 The National Mekong Committee (NMC)

The roles/functions/responsibilities of each NMC under the Procedures are:

- a. To inform the relevant line agencies of the scope, content and form for Notification of a proposed use as stipulated in 4.1 of the Procedures;
- b. To review and check Notification received from line agencies concerned to ensure that data and information for Notification are complete and consistent with the content and form/format;

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- c. To assemble, record and transmit the Notification with appropriate documents to the MRC Secretariat for its submission to the MRC JC and transmission to the other NMCs.

4.3.2 The MRC Secretariat

The roles/functions/responsibilities of the MRC Secretariat under the Procedures are:

- a. To receive, check for completeness, record and make files on the Notifications according to the form/format as appeared in Annex I;
- b. To submit the Notification to the MRC JC and copy to each other NMCs;
- c. To enter the relevant data and information into the MRC Secretariat Data and Information System; and
- d. To place any comments on a Notification in the file, and submit to the MRC JC.

4.3.3 The MRC Joint Committee

The roles/functions/responsibilities of the MRC JC under the Procedures are to acknowledge any Notification submitted to it and take note of the comment, if any, submitted through the MRC Secretariat;

4.4 Process for Notification

Notification shall be transmitted by the relevant NMC to the MRC JC through the MRC Secretariat in conformity with their respective roles/functions/responsibilities as stipulated in 4.3 of the Procedures.

4.5 Timing for Notification

Notification of proposed use shall be transmitted to the MRC JC in a timely manner prior to implementation.

4.6 Absence of Notification

In case that the Notification has not been provided, the MRC JC will request the relevant NMC to fulfill its duties/responsibilities as provided in 4.3.1 of the Procedures.

5. Prior Consultation

5.1 Scope of Prior Consultation

Taking into account Article 5 of the Mekong Agreement and aiming at arriving at an agreement, the following proposed uses shall be subject to Prior Consultation:

- a. Inter-basin diversion from mainstream during wet season;
- b. Intra-basin use on the mainstream during the dry season; and

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- c. Inter-basin diversion of the surplus quantity of water during the dry season.

5.2 Content and Form/Format of Prior Consultation

5.2.1 Content

In addition to the data and information required for Notification, the notifying State shall timely provide the MRC JC with available and additional technical data and information on its proposed use of waters for an evaluation of impacts by the other riparian States, as appeared in Annex II (A).

5.2.2 Form/Format

The form/format and information checklist to be used by a notifying country is set out in Annex II (A).

5.2.3 Form/Format for Reply by Notified State(s)

The form/format to be used by the notified State(s) to reply to the proposed use is set out in Annex II (B).

5.3 Institutional Mechanism for Prior Consultation

The Institutional Mechanism for handling the Prior Consultation process under the Procedures shall involve the NMCs and the MRC's bodies with their respective roles/functions/responsibilities which are as follows:

5.3.1 The National Mekong Committees (NMCs)

The roles/functions/responsibilities of each NMC under the Procedures are:

- a. To inform the relevant line agencies of the scope, content and form/format required for Prior Consultation of a proposed use covered by the Procedures;
- b. To receive, review and check documentation for any Prior Consultation submitted to it to ensure that it is complete and consistent with the content and form/format;
- c. To assemble and transmit the proposal with appropriate documents to the MRC Secretariat for their submission to the MRC JC and transmission to the other NMCs;
- d. To facilitate any consultations, presentations, evaluation and site visit as requested by the MRC JC for the proposed use; and
- e. To record and transmit copies to respective line agencies or party(ies) making the proposal for a definite use of water through the Prior Consultation process of any comments or response received from the MRC Secretariat.

5.3.2 The MRC Secretariat

The roles/functions/responsibilities of the MRC Secretariat under the Procedures for Prior Consultation are:

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- a. To receive, check for completeness, record and make a file of the documents for Prior Consultation according to the form/format in Annex II (A) and replies from notified States according to the form/format in Annex II (B);
- b. To submit the documents for Prior Consultation for the proposed use to the MRC JC and copy to each other NMCs;
- c. To review, analyze and provide technical advice to the MRC JC as may be requested by it;
- d. To supply available additional data and information and facilitate the meetings as requested by member State(s) concerned;
- e. To provide available technical support for any evaluation. If required, the MRC JC may set up fact-finding team supported by the Secretariat to visit the project site; and
- f. To enter the relevant data and information into the MRC Data and Information System.

5.3.3 The MRC Joint Committee

The roles/functions/responsibilities of the MRC JC under the Procedures for Prior Consultation are:

- a. To acknowledge and review documents of any Prior Consultation submitted to it through the MRC Secretariat;
- b. To review any comment submitted to it by any member State;
- c. To carry out consultation on the proposed use among parties concerned with the support of the MRC Secretariat. The MRC JC, under Rule 4 of its Rules of Procedures, set up a Working Group to assist in the Prior Consultation process aiming to arriving at an agreement on the proposed use.
- d. To make every effort to address any matters that may arise during the process of Prior Consultation.
- e. To verify and unanimously confirm availability of surplus quantity of water on the mainstream in accordance with criteria approved by the MRC Council under Article 26 of the Mekong Agreement should there be a proposed use for inter-basin diversion in the dry season.

5.3.4 The MRC Council

The function of the MRC Council under the Procedures is in accordance with the stipulation of the Mekong Agreement.

5.4 Process for Prior Consultation

5.4.1 Submission of documents for prior consultation

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Documents for Prior Consultation on any proposed use specified in 5.2.1 and Annex II (A) shall be submitted by the NMC of the notifying State(s) to the MRC JC through the MRC Secretariat in a timely manner. The MRC Secretariat shall transmit copies of the documents to other member State(s) for their evaluation and reply.

5.4.2 Evaluation and Reply to proposed use

Upon receiving the documents from the notifying State(s) submitted to the MRC JC through the MRC Secretariat, the other member(s) should evaluate the proposed use and reply to the MRC JC through the MRC Secretariat according to the form/format in Annex II (B).

If necessary, through the MRC JC, the notified State(s) may request additional information, a consultation or presentation, and/or a field visit to the project site in order to evaluate the possible impacts of the proposed use and any other affects on their rights and to facilitate the aim of reaching an agreement by the MRC JC.

During the evaluation process period, the notifying State(s) shall provide, if requested, available data and information and facilitate an appropriate evaluation. If necessary, the MRC JC may direct the MRC Secretariat or appoint a working group or technical advisory team to assist in the evaluation of the proposed use and possible impacts on existing uses and rights of other riparian State(s).

5.4.3. Decision by MRC JC

The MRC JC shall aim to arriving at an agreement on the proposed use and issue a decision that contains the agreed upon conditions. That decision shall become part of the record of the proposed use and of the record of the use of the waters when commenced.

The notifying State(s) shall not implement the proposed use without providing the opportunity of the other member States to discuss and evaluate the proposed use. The MRC JC shall take note of replies and place in the record for the proposed use of any concerns or reservations made by the notified State(s).

5.5 Timing for Prior Consultation

5.5.1 The timeframe for Prior Consultation shall be six months from the date of receiving documents on Prior Consultation.

5.5.2 If necessary, an extended period shall be permitted by the decision of the MRC JC.

5.6 Absence of Prior Consultation

In case that the required documents for Prior Consultation has not been provided, the MRC JC will request the relevant NMC to fulfill its duties/responsibilities as provided in 5.2.1 of the Procedures.

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6. Specific Agreement

Any inter-basin diversion project during the dry season from the mainstream shall be agreed upon by the MRC JC through a Specific Agreement for each project prior to any proposed diversion. Such a Specific Agreement, signed/approved by all members of the MRC JC, sets out agreed terms and conditions such as timing, quantity of diversion, etc. While the format and content of the Specific Agreement shall be established by the MRC JC on a case-by-case basis, the format and content for Notification and Prior Consultation shall apply.

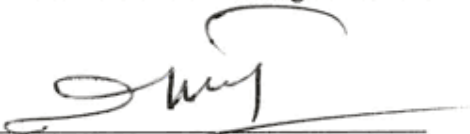
7. Final Provisions

- a. The Annexes shall form an integral part of the Procedures.
- b. Reporting to the MRC Joint Committee
The MRC Secretariat will report annually to the MRC JC on relevant matters regarding the implementation of the Procedures, including necessary recommendations.
- c. Amendments to the Procedures
Any amendment or revision to the present Procedures shall be approved by the MRC Council.
- d. Entry into Force
The Procedures shall take effect among the member States on the date of the approval of the MRC Council.

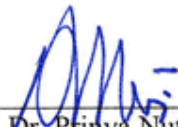
Approved by the MRC Council on the thirtieth day of November of the year two thousand and three at its Tenth Meeting in Phnom Penh, Cambodia.



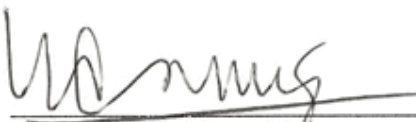
H.E. Mr. Lim Kean Hor
MRC Council Member for the Kingdom of Cambodia



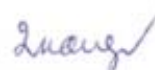
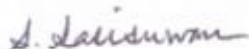
H.E. Mr. Somphong Mongkhonvilay
MRC Council Member for the Lao People's Democratic Republic



H.E. Prof. Dr. Prinya Nutalaya
For the MRC Council Member for the Kingdom of Thailand



H.E. Dr. Pham Hong Giang
Alternate Member of the MRC Council for the Socialist Republic of Viet Nam



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Form/Format of Notification

1. Notifying State: -----

2. Date of submission: -----
3. Notifying Ministry/Agency (name, address, telephone, fax, e-mail): -----

4. Contact person/address (name, address, telephone/fax/e-mail): -----

5. Name of the project: -----

6. Location of the project: -----

7. Nature of the proposed project:
 - a) On tributary:
☐ Intra-basin uses
☐ Inter-basin diversion
 - b) On the mainstream:
☐ Intra-basin use during wet season
8. Purpose of the proposed project: -----

9. Expected date of the implementation:
 - a) Date for starting the construction -----
 - b) Date for finishing the construction -----
 - c) Date for the operation -----
10. Duration of and timing for water use: -----

11. Description of the project: (i.e.: scope, scale, map, type, quantity, capacity and characteristic, etc.) -----

12. Attached documents: -----

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Form/Format for Prior Consultation

1. **Proposing State(s):** -----

2. **Date of submission:** -----
3. **Proposing Ministry(ies)/Agency(ies)** (Name, mail/e-mail address, telephone, fax): -----

4. **Contact person/facilitator** (Name, mail/e-mail address, telephone, fax): -----

5. **Name of the project:** -----

6. **Location of the project:** -----

7. **Nature of the proposed use:**
☐ Inter-basin diversion from the mainstream during wet season
☐ Intra-basin use on the mainstream during dry season
☐ Inter-basin diversion of the surplus water from the mainstream during dry season
8. **Purpose of the proposed use:** -----

9. **Expected date for the implementation:**
a) Date for starting the construction -----
b) Date for finishing the construction -----
c) Date for the operation -----
10. **Duration and timing for the utilization of the proposed use of water:** -----

11. **Description of the project** (scope, scale, site, type, quantity, capacity, and characteristic, etc.): -----

12. **Observation or comment:** -----

13. **Attached available data and information and/or documents**, e.g. summary of feasibility study (FS), initial environmental evaluation (IEE), etc.-----

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Form/Format for Reply to Prior Consultation

1. **Replying State(s):** -----

2. **Date of reply:** -----
3. **Replying Ministry(ies)/Agency(ies)** (Name, mail/e-mail address, telephone, fax): -----

4. **Contact person/facilitator** (Name, mail/e-mail address, telephone, fax): -----

5. **Name of the proposed use/project:** -----

6. **Location of the proposed use:** -----

7. **Nature of proposed use:**
☐ Inter-basin diversion from the mainstream during wet season
☐ Intra-basin use on the mainstream during dry season
☐ Inter-basin diversion of the surplus water from the mainstream during dry season
8. **Date of receipt of the documents:** -----

9. **Reply to proposed use:** -----

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